

EXHIBIT G

1 STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY
2 BRANCH 25

3

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STATE OF WISCONSIN,

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Plaintiff,

6

-vs-

Case No. 13-CF-617

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EDDIE GILL,

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Defendant.

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February 25, 2014

10 BEFORE THE HONORABLE
11 STEPHANIE ROTHSTEIN

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MOTION TO SUPPRESS STATEMENTS

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COURT'S DECISION

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APPEARANCES

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ANTONI APOLLO, Assistant District Attorney,

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appeared on behalf of the State.

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JOHN BIRDSALL, Attorney-at-Law, appeared on

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behalf of the Defendant.

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Defendant Present In Court

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STEPHANIE SHOATE

OFFICIAL COURT REPORTER

P R O C E E D I N G S

(Whereupon, the following
proceedings began at 10:08 o'clock in the
forenoon.)

THE CLERK: State of Wisconsin
versus Eddie Gill. 13-CF-617. Appearances,
please.

MR. APOLLO: Antoni Apollo
appears for the state.

MR. BIRDSALL: Mr. Gill in
person, in custody with Attorney John
Birdsall. Good morning.

THE COURT: All right. Good
morning. We're here this morning for a
decision on the Motion to Suppress that's been
filed by the defense in this case.

At first blush Mr. Birdsall
initially filed a motion at the end of
December requesting an evidentiary hearing and
sought to suppress specifically the statement
that was made by Mr. Gill in the morning
commencing at approximately 7 a.m. on February
14th, 2013. Upon the Court's inquiry,
Mr. Birdsall supplemented his motion to
include a challenge to the admissibility of

1 interrogations of which took place both before
2 and after that. It's important to review the
3 facts here in terms of the timing, and the
4 Court finds that this is the time line here
5 based upon all of the submissions, the
6 transcripts, and the testimony in this case
7 and I've reviewed everything.

8 Correctly stated by Mr. Birdsall
9 in his supplement filed February 10th, 2013,
10 to this motion, Mr. Gill appeared at the
11 Police Administration Building at the City of
12 Milwaukee Police Department in the evening
13 hours of February 12th, 2013, primarily, it
14 appears, as a witness between 7:30 and 8 p.m.
15 He was interrogated by Detectives Graham and
16 Gulbrandson who determined at a particular
17 point in their interrogation that because of
18 inconsistencies, and I find that there were in
19 fact inconsistencies between Mr. Gill's
20 recounting of events and their investigation,
21 a determination was made to place Mr. Gill
22 under arrest for obstructing. That decision
23 has not been challenged here. And even if
24 there had been a motion filed challenging the
25 propriety of that arrest, the Court would

1 uphold it and find that it was appropriate --
2 an appropriate exercise of their authority
3 under the circumstances.

4 Subsequent to Mr. Gill being
5 placed under arrest, the recording equipment
6 was turned on and the remainder of the
7 interaction between these two detectives and
8 Mr. Gill was memorialized on video and audio
9 recording and a transcript has been provided
10 to the Court. The parties have stipulated
11 that all of the transcripts that have been
12 submitted are accurate written records of the
13 contents of those DVDs.

14 That interview ended. And then
15 on the 13th at approximately seven or 7:30 in
16 the morning, Detective Hensley reinterviewed
17 the defendant and administered a polygraph
18 examination. Later on on the 13th of
19 February, 2013, Detectives Peterson and Ball
20 interviewed Mr. Gill, interrogated Mr. Gill
21 because there's no doubt that Detective
22 Hensley's contact on the 14th with Mr. Gill
23 was an interrogation and there's no doubt that
24 Detectives Graham -- or I'm sorry --
25 Detectives Peterson and Ball interrogated the

1 defendant. And then later on on the same day,
2 Detective Hensley -- I'm sorry. The next day
3 Detective Hensley returned on February 14th in
4 the morning for yet another interrogation.
5 That is the time line here. So four separate
6 interactions, February 12th, February 13th in
7 the morning, February 13th in the afternoon or
8 evening, and February 14th in the morning.

9 It's important that we also
10 review Mr. Gill's personal characteristics.
11 Mr. Gill's personal characteristics are the
12 following and I find these to be a matter of
13 record. Although they were only addressed
14 briefly at the end of our hearing yesterday
15 and upon the Court's inquiry, Mr. Gill has
16 been found twice previously in court
17 proceedings to be incompetent, and efforts
18 were made to restore him or to remediate him
19 by counseling so that he could attain
20 competency. Those efforts failed on two
21 occasions prior to February 2013.

22 Mr. Gill, after he was charged
23 with this offense, was interviewed, a
24 challenge was interposed to his competence,
25 and he was referred for a doctor's evaluation

1 and was determined initially by the
2 interviewer to be not competent but likely to
3 attain competence. And my review of the
4 records indicates that that determination was
5 made a mere 12 days after based upon an
6 interview with the doctor on February 26th.

7 Mr. Gill is an individual who was
8 prescribed medication for diagnosed mental
9 health problems, who was not taking his
10 medication. The record supports that. The
11 exhibits that have been filed by the defense
12 supports that. Mr. Gill's mother testified
13 that she attempted to advise Detective
14 Peterson that Mr. Gill was slow and had, my
15 word, "cognitive" issues. She didn't use that
16 word but that's what we can infer from her
17 testimony. The detective denies -- denied
18 that conversation. However, the Court found
19 Ms. DeBerry's testimony to be credible in that
20 regard.

21 So we have a young man who has
22 been found not competent twice before, who's
23 functionally illiterate, who is not competent
24 according to the medical professional 12 days
25 after he was interrogated, whose mother

1 advised the detective that he had these
2 cognitive issues, and he's in custody under --
3 who for anyone under normal circumstances
4 would be a stressful set of circumstances.
5 Those are the facts that the Court finds them
6 up to commencing the interrogations.

7 I will say further as background,
8 I've reviewed all of the reports that are
9 contained in the court file surrounding the
10 determination of competence at the very -- or
11 lack of competence at the very beginning of
12 this case and the reports from Mendota and the
13 final report and decision of Judge Brostrom.
14 I've also reviewed the reports that have been
15 submitted by the two defense experts in this
16 case. I've reviewed the transcripts. And
17 it's clear that -- and portions of the
18 recorded interviews. It's clear that the
19 defendant in his statements was all over the
20 board. I was here. I was there. I didn't do
21 this. I did it. There are all sorts of -- I
22 call them almost "frantic statements" trying
23 to exculpate himself. At one point he's on
24 the -- in the interview room alone on February
25 12th talking to himself at length, pages and

1 pages protesting his innocence. So I want to
2 then review the standards in what the law
3 requires here.

4 Now, we all know that it's the
5 state's burden. The proponent of the evidence
6 has a burden of proving by preponderance of
7 the evidence. They have to establish that the
8 defendant's rights were not violated by the
9 challenged behavior by law enforcement. In
10 other words, the exclusionary rule really is
11 reserved for use and application as an
12 extraordinary remedy.. We recognize that it --
13 and I'm quoting from State vs. Herr, H-e-r-r,
14 at 346 Wis. 2d 603. And this Court recognizes
15 that -- the exclusionary rule in Fourth
16 Amendment context but I also support this as a
17 policy statement about Fifth and Sixth
18 Amendment situations, that the Court
19 recognizes that this does "exact substantial
20 social costs, including potentially releasing
21 guilty and dangerous criminals into
22 communities and impairing the truth-seeking
23 objectives of our legal system."

24 So the Court is mindful of the
25 implications beyond the immediate proceedings,

1 the effects of its rulings in any case
2 involving the suppression of evidence. I'm
3 also guided by state dicta in an unpublished
4 case from this county, State vs. Cole, that
5 discusses the burden of proof at a suppression
6 hearing and talks about what the requirements
7 are in terms of advisal of rights and the next
8 step that law enforcement is obliged to take
9 if the defendant invokes his right to
10 counsel.

11 We recognize that if a defendant
12 invokes his right to silence, the officers are
13 entitled to reinitiate questioning, discuss a
14 little further with him the circumstances that
15 lead him to want to remain silent after an
16 appropriate period of time has passed. But if
17 a defendant asserts his Sixth Amendment right
18 to counsel, the case law is clear that that
19 assertion has to be scrupulously honored. And
20 I am also relying on Maryland vs. Shatzer,
21 S-h-a-t-z-e-r, at 130 Supreme Court 1213,
22 which is a 2010 proceedings or case.

23 Various Wisconsin cases have
24 taken up Maryland vs. Shatzer, have endorsed
25 it, adopted it, and recognize that there are

1 certain circumstances when someone asserts
2 their right to counsel. It's appropriate to
3 have subsequent contact with law enforcement.
4 Those are situations where someone's asserted
5 their right to counsel and they're released
6 from custody and the police then seeks to
7 reinitiate conversations or counsel's been
8 made available or a clear-cut case where
9 finally a defendant or an accused, a suspect
10 who's in custody reinitiates his contact with
11 law enforcement.

12 So those are the circumstances
13 under which we can -- law enforcement can
14 proceed after there's been an effective
15 assertion of a suspect's right to counsel.

16 There are some very strict rules
17 and some very bright line rules that apply
18 when someone has asserted their right to
19 counsel. And the Court -- this Court has
20 considered these circumstances very carefully
21 and the effects of the Court's ruling in this
22 case very carefully. Not only do we have a
23 bright line rule about assertion of right to
24 counsel and what law enforcement's response
25 should be, in this case we have a defendant

1 who undeniably has limitations that put him
2 outside the mainstream of our general
3 population in terms of his intellect and his
4 mental health.

5 Mr. Birdsall has done quite a
6 good job of providing the Court with a lot of
7 background information in terms of the
8 exhibits and information about the defendant
9 personally by way of the experts' opinions.
10 But frankly, this Court is most swayed by the
11 information that it learned late in the day
12 yesterday. And really that was emphasized
13 mostly after the Court inquired about it.
14 That being the history of the defendant with
15 law enforcement.

16 And while Mr. Gill is certainly
17 someone who has a lot of experience with the
18 police and while he's someone whose certainly
19 been in and out of facilities, detention, jail
20 for various offenses and criminal conduct, the
21 Court cannot ignore his personal
22 circumstances, his personal characteristics
23 that affect his ability to fully comprehend
24 the consequences of his actions in a legal
25 sense. And that is all the Court has to

1 consider today. Not guilt or innocence.
2 These decisions have to be made putting aside
3 considerations of guilt or innocence of the
4 charged offense. Because as Mr. Gill sits
5 here today, this Court must presume that he is
6 innocent of this offense as it has not yet
7 been proven.

8 So putting that aside, the
9 question then has to be whether or not, given
10 this defendant's circumstance and all the
11 circumstances that I set forth for the record,
12 a couple of things. First, did he make a
13 knowing and intelligent waiver of his rights?
14 The Court determines that the state has proven
15 that by the preponderance of the evidence
16 here, Mr. Gill, based on his previous
17 experience with law enforcement, based upon
18 the conversations that he had with the
19 detectives, that he did make a knowing and
20 intelligent waiver of his rights. He clearly
21 was in custody. He clearly was subject to
22 questioning designed to elicit incriminating
23 responses. He was properly advised of his
24 rights and waived them and emphatically waived
25 them at one point.

1 But the second part of the
2 equation is whether or not the confession or
3 any inculpatory statements that he made were
4 the voluntary product of a free and
5 unconstrained will. Did these -- do these
6 statements reflect a deliberate choice on the
7 part of Mr. Gill or rather were they coerced
8 by improper police pressure? And most of the
9 time and in the days before DVDs and recorded
10 confessions, most of the challenges around
11 voluntariness of statements came in the form
12 of: I was physically coerced or menaced or
13 threatened. The officers were armed. They
14 hurt or they threatened to hurt me. That was
15 the substance of most of the challenges to the
16 voluntariness aspect.

17 But as we have progressed and as
18 these encounters are memorialized and
19 videotaped, certainly -- and it's a good thing
20 for everybody concerned, those kind of
21 challenges have greatly diminished. But the
22 kind of challenge that we have here today has
23 come more to the fore, how to gauge an
24 interaction between sophisticated, highly-
25 trained investigators with a metropolitan

1 police department, how to gauge their
2 interactions with an individual of Mr. Gill's
3 personal circumstance.

4 So the Court finds that improper
5 police pressure and improper methods is not
6 confined to the physical. It encompasses the
7 whole gamut of interview techniques. And
8 there are some things that are in bounds and
9 some things that are hard blows and there are
10 some things that are foul blows.

11 So on February 12th, Mr. Gill
12 clearly invoked his Sixth Amendment right to
13 counsel when he says on Page 13 of the
14 transcript that's been prepared for the Court
15 "I don't have a lawyer though. I want one,"
16 on lines 13 through 14. And the detectives
17 honor that request. The interview is
18 stopped. The defendant is removed from the
19 room and taken presumably to a cell. And that
20 is the proper procedure.

21 The next day the testimony was
22 that the defendant was brought up to talk to
23 the detective in the morning and that somehow
24 he came up on his own with the idea that he
25 wanted to have a polygraph. The Court's

1 assuming that that's credible. That's a
2 credible assertion. But it's important to
3 note what happens next. And I'm referring to
4 the transcript of the morning proceedings --
5 the morning encounter between the detective
6 and the defendant on February 13th beginning
7 at approximately seven or 7:30 in the morning.

8 Beginning on Page 3, the
9 interrogator acknowledges "I was told you
10 asked for a lawyer last night when you were
11 talking to the detectives." Mr. Gill
12 acknowledges "Yes." The interviewer then asks
13 "But you changed your mind and want to take a
14 polygraph?" Mr. Gill answers "Yes." And we
15 go on a couple lines later and the detective
16 explains to Mr. Gill that once you ask for a
17 lawyer that nobody can talk to you, the
18 detectives, the cops, nobody can talk to you
19 or anything after that and Mr. Gill indicates
20 that he understands that. The interview then
21 goes on. And this is crucial. At line 18 he
22 says "Okay. But now you're asking for a
23 polygraph. We can't do that without a lawyer
24 unless you're saying you don't want a
25 lawyer." Let's look at that statement.

1 The detective tells Mr. Gill that
2 he can't have a polygraph without a lawyer
3 unless he waives his right to have a lawyer.
4 It doesn't make much sense. In reality what
5 the Court infers the detective was trying to
6 say was that: It will take time to get you a
7 lawyer and you can have a lawyer and have a
8 polygraph but it will take time. And if you
9 want to do it right now, we don't have time to
10 get a lawyer. That's what I'm inferring was
11 the intention of those remarks. However, it
12 didn't come out that way. And Mr. Gill, by
13 his answers, clearly didn't interpret it that
14 way. Mr. Gill by his answers -- and I'll go
15 through those -- clearly interprets the
16 detective's remarks as being one-or-the-other-
17 type of situation: Either you have a
18 polygraph now without a lawyer or you don't.
19 And we'll get you a lawyer later. Because --
20 and we know that Mr. Gill interprets it that
21 way by the interaction.

22 So he's invoked his right one
23 time. The detective presents him with a
24 misstatement or at the very least a confusing
25 proposition. And Mr. Gill says "No. I want

1 this" on Page 3, line 22. And then the
2 interviewer basically puts words in Mr. Gill's
3 mouth. Instead of asking: Yes or no? Do you
4 want a lawyer or don't you want a lawyer or do
5 you want to wait to take the polygraph and
6 we'll get you a lawyer or do you want to take
7 the polygraph without a lawyer? He says --
8 the question is "Okay. So you're saying you
9 don't want a lawyer?" Mr. Gill answers "No.
10 I want this."

11 So the Court interprets this
12 exchange this way, that Mr. Gill is hearing:
13 This is my choice: I don't have a lawyer and
14 I take the polygraph or I don't get to take
15 the polygraph and I wait for a lawyer. And
16 that is not the way it has to work in the
17 Court's estimation. You have a right to have
18 a lawyer. And if the police department still
19 offers you a polygraph, you can still take a
20 polygraph if you're represented. The Court's
21 aware there can't be anybody else in the room
22 and there are all sorts of other rules that go
23 along with this. But it is not an all-or-
24 nothing proposition as it's clearly
25 interpreted by Mr. Gill.

1 So the problem here is that
2 Mr. Gill's statements thereafter in this
3 Court's finding are not voluntary. They were
4 the product of the choice that was put to him,
5 which given his limitations I find that he did
6 not appropriately -- the inference is by the
7 exchange -- that he did not properly
8 understand his choices and further that the
9 officers did not scrupulously honor his
10 request for an attorney. And I will note
11 again, he subsequently invoked his right to
12 counsel in the final interaction on February
13 14th and again was told: Well, it's one or
14 the other. And that's a problem because
15 people who are represented by counsel make
16 statements to the police if they decide that
17 that's what they want to do after consulting
18 with their lawyer.

19 Part of the problem that I also
20 find with this whole interaction between
21 Mr. Gill and law enforcement in this case is
22 apparently the practice that's been employed
23 of having multiple interrogators deal with one
24 suspect. In this case there were five
25 separate individuals interrogating Mr. Gill

1 over a period from the evening of February
2 12th through at least noon on February 14th.
3 When there is no one person who is
4 consistently involved with a suspect, it
5 increases the likelihood that
6 miscommunications will occur and this is what
7 we are seeing.

8 Therefore, based upon the legal
9 standards that the Court is bound to employ
10 and after examination of all the facts as I
11 found them to be and Mr. Gill's personal
12 circumstance in this case, I am finding that
13 his statements that were made beginning in the
14 morning of February 13th, 2013, and forward
15 are not admissible and that they were not
16 voluntary and his request for counsel was not
17 scrupulously honored. Therefore, those
18 statements will be suppressed for use by the
19 state in their case-in-chief.

20 Now, Mr. Apollo, do you need some
21 time to digest the Court's ruling?

22 MR. APOLLO: I do. I would
23 request a short status date, Your Honor.

24 THE COURT: All right. I'll
25 allow you that. How long do you need?

1 MR. APOLLO: If I could have a
2 week. Would that be okay with the Court?

3 THE COURT: We'll see what we
4 have. We'll go off the record.

5 (Whereupon, discussion held off
6 the record.)

7 (Whereupon, discussion held back
8 on the record.)

9 THE CLERK: Next court date
10 Thursday, March 6th, 1:30 for status.

11 (Whereupon, proceedings ended at
12 10:44 o'clock in the forenoon.)

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) SS

MILWAUKEE COUNTY)

19 Dated this 27th day of February, 2014, at
20 Milwaukee, Wisconsin.

Stephanie Shoate

Stephanie Shoate
Certified Merit Reporter